

JUL 31 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****BENJAMIN ANDREW PEREZ,****Petitioner - Appellant,****v.****ERNIE ROE, Warden,****Respondent - Appellee.****No. 03-56532****D.C. No. CV-02-09186-JFW****MEMORANDUM***

**Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding**

**Argued and Submitted June 6, 2006
Pasadena, California**

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

Benjamin Andrew Perez appeals the district court's dismissal as time-barred of his petition for writ of habeas corpus. Perez argues that the district court before which he filed his original petition erred by (1) failing to inform him that it could stay proceedings pending the resolution in state court of his unexhausted claims

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

and (2) dismissing his petition without informing him that, absent cause for equitable tolling, a subsequent petition would be time-barred under the Anti-Terrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2244(d)(1).

In civil cases, a new rule of law applies retroactively if it was applied to the parties in the case in which the rule was announced. *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993). Therefore, *Pliler v. Ford*, 542 U.S. 225 (2004), applies retroactively to foreclose Perez's principal assignments of error. *See United States v. Newman*, 203 F.3d 700, 702 (9th Cir. 2000) (holding that *Harper* governs in habeas cases because they are "civil rather than criminal in nature").

Assuming, without deciding, that Perez's additional assignments of error are correct, his substantial delays in pursuing his claim after the erroneous dismissal render him ineligible for equitable tolling of the statute of limitations. *See Guillory v. Roe*, 329 F.3d 1015 (9th Cir. 2003).

We decline to expand the certificate of appealability to address Perez's additional argument that he had fully exhausted his claims when he filed his original habeas petition. Even if his contention were correct, Perez would not be entitled either to statutory or to equitable tolling. *See* 28 U.S.C. §2244(d)(1)(B); *Guillory*, 329 F.3d at 1017-18.

AFFIRMED.